NEW APPLICATION ORIGINAL

COMMISSIONERS

BOB STUMP, Chairman

GARY PIERCE BRENDA BURNS

BOB BURNS SUSAN BITTER SMITH



1

2 3

4

5 6

7

9

8

In the matter of:

2403647),

10 11

12

13 14

15

16

17

18 19

20

21

22

23

24

25

26

2014 SEP 11 A 8:53

BEFORE THE ARIZON ACTOR PORTED N COMMISSION

AL GORP-COMMISSION BOOKET CONTROL

Arizona Corporation Commission DOCKETED

SEP 1 1 2014

DOCKETED BY

DOCKET NO. S-20916A-14-0328

MICHELLE LEE WAGNER (CRD No.

Respondent.

NOTICE OF OPPORTUNITY FOR HEARING REGARDING PROPOSED ORDER OF REVOCATION/SUSPENSION, TO CEASE AND DESIST, FOR RESTITUTION, AND FOR ADMINISTRATIVE PENALTIES

NOTICE: RESPONDENT HAS 10 DAYS TO REQUEST A HEARING RESPONDENT HAS 30 DAYS TO FILE AN ANSWER

The Securities Division ("Division") of the Arizona Corporation Commission ("Commission") alleges that Michelle L. Wagner has engaged in acts, practices, and transactions that constitute violations of the Securities Act of Arizona, A.R.S. § 44-1801, et seq. ("Securities Act").

JURISDICTION

1. The Commission has jurisdiction over this matter pursuant to Article XV of the Arizona Constitution and the Securities Act.

II.

FACTS

- 2. Michelle L. Wagner has been at all relevant times an Arizona resident.
- 3. Wagner began working as a registered representative in 1993. From 1998 to the present, Wagner, CRD No. 2403647, has been registered as a securities salesman in Arizona.
- 4. Beginning in November 2003, and continuing through 2013, LP, an Arizona resident, became a customer of Wagner's. Wagner managed brokerage accounts owned by LP, LP's retirement accounts, an entity controlled by LP, and LP's charitable remainder trust (the "Trust"). These accounts contained, among other assets, mutual funds, stocks and bonds.
 - 5. LP was the sole trustee of the Trust and acted on its behalf.
- 6. LP is not a relative of Wagner's and neither he nor the Trust is or was in the business of lending money.
 - 7. In May 2005, Wagner, dba "Creative Consulting," borrowed \$400,000 from the Trust.
- 8. The \$400,000 loan was for the purchase and tenant improvements of an office condominium in Scottsdale.
- 9. After purchasing the office in May 2005, and causing the tenant improvements to be built, Wagner used it as her place of business until 2013.
- 10. The loan from the Trust is evidenced by several documents. The first is a Promissory Note dated May 16, 2005, and signed by Wagner. Under the terms of the note, Wagner was to pay the Trust annual interest of 4%.
- 11. As part of this same loan, Wagner signed a second Promissory Note on June 1, 2008. Under the terms of this note, Wagner would pay the Trust \$1,500 per month for 24 months. At the end of that period all unpaid interest and principal would be due.
- 12. The loan from the Trust is also evidenced by a Deed of Trust and Assignment of Rents dated May 16, 2005, with the office condominium as the collateral securing Wagner's obligations under the 2005 note. This deed of trust was not recorded.

13. The parties also executed a second Deed of Trust dated June 1, 2008. This deed of trust also has the office condominium as the collateral securing Wagner's obligations under the 2008 note. This deed of trust was recorded with the Maricopa County Recorder at Instrument No. 2008-0529403.

- 14. The parties agreed to a third modification to the notes and deeds of trust on or around August 1, 2011. At this time, the Trust and Wagner executed a document titled "Extension of Real Estate Note and Deed of Trust Lien." Under this document, Wagner would pay the Trust \$1,500 a month through December 30, 2012.
- 15. The parties did not renew or extend the loan past December 30, 2012. At or around that time, the Trust demanded that the entire principal amount, \$400,000, be paid on the due date.
- 16. On April 30, 2013, the Trust foreclosed on the property that was the security in the 2008 Deed of Trust. The sale price at the foreclosure was \$152,000.
- 17. Prior to the foreclosure, Wagner paid the Trust interest on the loan pursuant to the terms of the notes. Wagner did not pay the Trust any principal.

III.

REMEDIES PURSUANT TO A.R.S. § 44-1962

(Revocation or Suspension of Salesman Registration, Restitution and Administrative Remedies)

- 18. Respondent's conduct is grounds to revoke or suspend her registration as a securities salesman with the Commission pursuant to A.R.S. § 44-1962(A)(10) and A.C.C. R14-4-130(15). Specifically, Wagner has borrowed money from her customer who, at the time of the loans to her, was neither a relative of hers nor a person in the business of lending funds.
- 19. Respondent's conduct is also grounds to assess penalties, restitution, or take appropriate affirmative action pursuant to A.R.S. § 44-1962(B).

IV.

REQUESTED RELIEF

The Division requests that the Commission grant the following relief:

- 1. Order the revocation or suspension of Respondent's registration as a securities salesman pursuant to A.R.S. § 44-1962;
- 2. Order Respondent to permanently cease and desist from violating the Securities Act pursuant to A.R.S. §§ 44-2032 and 44-1962;
- 3. Order Respondent to take affirmative action to correct the conditions resulting from her acts, practices, or transactions, including a requirement to make restitution pursuant to A.R.S. §§ 44-2032 and 44-1962;
- 4. Order Respondent to pay the state of Arizona administrative penalties of up to five thousand dollars (\$5,000) for each violation of the Securities Act pursuant to A.R.S. §§ 44-1962 and 44-2036;
 - 5. Order any other relief that the Commission deems appropriate.

V.

HEARING OPPORTUNITY

Respondent may request a hearing pursuant to A.R.S. § 44-1972 and A.A.C. R14-4-306. If Respondent requests a hearing, Respondent must also answer this Notice. A request for hearing must be in writing and received by the Commission within 10 business days after service of this Notice of Opportunity for Hearing. Respondent must deliver or mail the request to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007. Filing instructions may be obtained from Docket Control by calling 602-542-3477 or on the Commission's web site at http://www.azcc.gov/divisions/hearings/docket.asp.

If a request for a hearing is timely made, the Commission shall schedule the hearing to begin 20 to 60 days from the receipt of the request unless otherwise provided by law, stipulated by the parties, or ordered by the Commission. If a request for a hearing is not timely made the Commission may, without a hearing, enter an order granting the relief requested by the Division in this Notice of Opportunity for Hearing.

Persons with a disability may request a reasonable accommodation such as a sign language interpreter, as well as request this document in an alternative format, by contacting Shaylin A. Bernal, ADA Coordinator, voice phone number 602-542-3931, e-mail sabernal@azcc.gov. Requests should be made as early as possible to allow time to arrange the accommodation. Additional information about the administrative action procedure may be found at http://www.azcc.gov/divisions/securities/enforcement/AdministrativeProcedure.asp.

VI.

ANSWER REQUIREMENT

Pursuant to A.A.C. R14-4-305, if Respondent requests a hearing, Respondent must deliver or mail an Answer to this Notice of Opportunity for Hearing to Docket Control, Arizona Corporation Commission, 1200 W. Washington, Phoenix, Arizona 85007, within 30 calendar days after the date of service of this Notice. Filing instructions may be obtained from Docket Control by calling 602-542-3477 or on the Commission's web site at http://www.azcc.gov/divisions/hearings/docket.asp.

Additionally, Respondent must serve the Answer upon the Division. Pursuant to A.A.C. R14-4-303, service upon the Division may be made by mailing or by hand-delivering a copy of the Answer to:

Ryan J. Millecam Securities Division Arizona Corporation Commission 1300 W. Washington St., 3rd Floor Phoenix, Arizona, 85007

The Answer shall contain an admission or denial of each allegation in this Notice and the original signature of the answering respondent or respondent's attorney. A statement of a lack of sufficient knowledge or information shall be considered a denial of an allegation. An allegation not denied shall be considered admitted.

When Respondent intends in good faith to deny only a part or a qualification of an allegation, Respondent shall specify that part or qualification of the allegation and shall admit the remainder. Respondent waives any affirmative defense not raised in the Answer.

The officer presiding over the hearing may grant relief from the requirement to file an Answer for good cause shown.

Dated September 11, 2014.

Matthew J. Neubert Director of Securities

RJM